

House Study Bill 27 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE
ON COMMERCE BILL BY
CHAIRPERSON SODERBERG)

A BILL FOR

1 An Act creating a certificate of merit in a medical malpractice
2 action.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 147.140 Certificate of merit.

2 1. In an action for damages for personal injury against a
3 health care provider licensed to practice or operate in this
4 state, based on the alleged negligence of the licensee in the
5 practice of the profession or occupation, or upon the alleged
6 negligence of the hospital in patient care, the plaintiff
7 shall file, simultaneous with the filing of the complaint, a
8 certificate of merit attesting to the following:

9 a. The plaintiff or plaintiff's attorney has consulted and
10 reviewed the facts of the case with an expert who the plaintiff
11 or the plaintiff's attorney reasonably believes meets the
12 following requirements:

13 (1) The expert is knowledgeable regarding the relevant
14 issues involved in the particular action.

15 (2) The expert is qualified by knowledge, skill,
16 experience, training, or education to testify as an expert
17 in the field of the alleged malpractice pursuant to section
18 147.139.

19 (3) The expert has no financial or personal interest in the
20 outcome of the case under review.

21 b. The expert has determined in a written report that there
22 is a reasonable and meritorious case for the filing of such
23 action.

24 2. The written report from the expert shall be attached
25 to the certificate of merit and shall contain all of the
26 following:

27 a. The name and address of the expert and sufficient facts
28 to support the conclusion that the expert is qualified by
29 knowledge, skill, experience, training, or education to testify
30 as an expert against the health care provider.

31 b. A statement that the expert's determination is based upon
32 an examination of the plaintiff, or an independent and thorough
33 review of all of the applicable medical records and, if
34 reasonably available, a physical examination of the plaintiff.

35 c. A description of the appropriate standard of care that is

1 expected of a reasonably competent health care provider in the
2 same class to which the health care provider belongs, acting in
3 the same or similar circumstances.

4 *d.* In the opinion of the expert, expressed with a reasonable
5 degree of medical certainty, that the appropriate standard of
6 care was breached by the health care provider named in the
7 complaint.

8 *e.* The factual basis for the expert's opinion.

9 *f.* A statement of the actions that the health care provider
10 should have taken or failed to take to have complied with the
11 standard of care.

12 *g.* A statement of the manner in which the breach of the
13 standard of care was the cause of the injury alleged in the
14 complaint.

15 3. Where a certificate of merit is required pursuant to
16 this section, a separate certificate and expert report shall be
17 filed as to each defendant named in the complaint and shall be
18 filed as to each defendant named at a later time.

19 4. The contemporaneous filing requirement of subsection 1
20 shall not apply to a case in which the period of limitation
21 will expire or there is a good faith basis to believe it will
22 expire on a claim stated within ten days of the date of filing
23 and the plaintiff asserts in good faith that because of such
24 time constraints compliance with the requirements was not
25 possible. In such cases, the plaintiff shall have forty-five
26 days after the filing of the complaint to supplement the
27 pleadings with the certificate of merit and expert report.

28 5. If a certificate of merit is not filed within the period
29 specified in this section the complaint is subject to dismissal
30 for failure to state a claim upon which relief can be granted.

31 6. If the plaintiff or the plaintiff's counsel files a
32 certificate of merit that does not meet the requirements of
33 subsection 1 or a report that does not meet the requirements of
34 subsection 2, the defendant to whom such certificate pertains
35 may file a motion to dismiss which shall specify the grounds or

1 basis by which the certificate or the report does not meet the
2 requirements of this section.

3 7. For the purposes of this section, "*health care provider*"
4 means a physician or surgeon, osteopath, osteopathic physician
5 and surgeon, dentist, podiatric physician, optometrist,
6 pharmacist, chiropractor, or nurse licensed to practice that
7 profession in this state, or a hospital licensed for operation
8 in this state.

9

EXPLANATION

10 This bill relates to the filing of a certificate of merit in
11 a medical malpractice action.

12 The bill provides that in an action for damages for
13 personal injury against a health care provider, defined as a
14 physician or surgeon, osteopath, osteopathic physician and
15 surgeon, dentist, podiatric physician, optometrist, pharmacist,
16 chiropractor, or nurse licensed to practice that profession in
17 this state, or a hospital licensed for operation in this state,
18 based on the alleged negligence of the licensee in the practice
19 of the profession or occupation, or upon the alleged negligence
20 of the hospital in patient care, the plaintiff shall file,
21 simultaneous with the filing of the complaint, a certificate of
22 merit. The certificate of merit shall state that the plaintiff
23 or plaintiff's attorney has consulted and reviewed the facts of
24 the case with an expert who the plaintiff or the plaintiff's
25 attorney reasonably believes is knowledgeable regarding the
26 relevant issues involved in the particular action, that the
27 expert is qualified by knowledge, skill, experience, training,
28 or education to testify as an expert, and that the expert has
29 no financial or personal interest in the outcome of the case
30 under review.

31 The bill further provides that the certificate of merit
32 shall be submitted with a written report from the expert
33 stating there is a reasonable and meritorious case for the
34 filing of such action and shall include the name and address
35 of the expert and sufficient facts to support the conclusion

1 that the expert is qualified, a statement that the expert's
2 determination is based upon an examination of the plaintiff,
3 or an independent and thorough review of all of the applicable
4 medical records and, if reasonably available, a physical
5 examination of the plaintiff, a description of the appropriate
6 standard of care that is expected of a reasonably competent
7 health care provider in the same class to which the health care
8 provider belongs, acting in the same or similar circumstances,
9 a statement that in the opinion of the expert, expressed with a
10 reasonable degree of medical certainty, that the appropriate
11 standard of care was breached by the health care provider named
12 in the complaint, the factual basis for the expert's opinion, a
13 statement of the actions that the health care provider should
14 have taken or failed to take to have complied with the standard
15 of care, and a statement of the manner in which the breach of
16 the standard of care was the cause of the injury alleged in the
17 complaint.

18 The bill further provides that a separate certificate and
19 expert report shall be filed as to each defendant named in the
20 complaint.

21 The bill provides that the requirement that a plaintiff
22 file a certificate of merit with the filing of the complaint
23 in the action shall not apply to a case in which the period
24 of limitation will expire or there is a good faith basis to
25 believe it will expire on a claim stated within 10 days of
26 the date of filing and the plaintiff asserts in good faith
27 that because of such time constraints compliance with the
28 requirements was not possible. In such cases, the plaintiff
29 shall have 45 days after the filing of the complaint to
30 supplement the pleadings with the certificate of merit and
31 expert report.

32 The bill provides that if a certificate of merit is not filed
33 within the period specified in this bill, the complaint is
34 subject to dismissal for failure to state a claim upon which
35 relief can be granted.

1 The bill provides that if the plaintiff files a certificate
2 of merit or an accompanying report that does not meet
3 the requirements of the bill, the defendant to whom such
4 certificate pertains may file a motion to dismiss which shall
5 specify the grounds or basis by which the certificate does not
6 meet the requirements of the bill.